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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

FELD ENTERTAINMENT, INC., Plaintiff and Respondent, v. DENIZ BOLBOL, Defendant and Appellant.	H043368 (Santa Clara County Super. Ct. No. CH004436)

Appellant Deniz Bolbol challenges the superior court's denial of her 2016 motion to dissolve an injunction that had been issued in 2013. She claims that the court should have dissolved the injunction based on evidence she presented in support of her motion challenging the credibility of the testimony upon which the 2013 injunction was based. We find no abuse of discretion in the superior court's decision to deny her motion, and we affirm its order.

I. Background

Respondent Feld Entertainment, Inc. (Feld) operated the Ringling Bros. Barnum and Bailey Circus. On August 14, 2012, a week after an August 7 Oakland, California "animal walk" preceding a Feld circus performance in Oakland, Feld filed a petition seeking a workplace violence restraining order (WVRO) against Bolbol, Joseph Cuviello,

and Sherisa Andersen under Code of Civil Procedure section 527.8.[1] Feld's petition was based on events that had occurred during the August 7 animal walk. Feld obtained a temporary restraining order (TRO) against Bolbol, Cuviello, and Andersen, and a trial was held in September 2012 on Feld's petition. Although numerous videos of the animal walk were presented at trial, none of the videos showed the conduct of Bolbol upon which Feld's petition was based.

David Bailey, Feld's assistant general manager for the circus, testified at the hearing that he saw Bolbol "pushing and shoving" during the August 7, 2012 animal walk, and that Bolbol pushed him in the back. Widny Neves, another Feld employee, testified that Bolbol "elbowed me in my stomach" during the August 7 animal walk. Feld employee Lorenzo Del Moral testified that he saw Bolbol "elbowing and pushing into the escorts" during the August 7 animal walk. Carla De Abreu Voigt, another Feld employee, testified that Bolbol pushed her "[m]aybe like five times" with her arm and shoulder during the August 7 animal walk.

The trial court denied the petition as to Cuviello and Andersen, but it found that Bolbol had "commit[ted] a battery against Feld employees." The court noted that these events were not captured on any of the videos, but it based its findings on the testimony of Voigt and Neves, whom it found "credible." The trial court expressly found that Voigt had been "pushed or hit several times" by Bolbol, that Bolbol "committed a battery" on Voigt, and that Bolbol "did elbow" Neves. In April 2013, the trial court issued a three-year WVRO against Bolbol protecting all of Feld's employees. The 2013 WVRO was set to expire on January 14, 2016.

Bolbol appealed to this court from the trial court's order. In 2014, while her appeal was pending, Bolbol filed a motion to dissolve the injunction, which the trial court

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[1] Subsequent statutory references are to the Code of Civil Procedure unless otherwise specified.

denied on the ground that it lacked jurisdiction due to the pending appeal. In December 2015, we affirmed the trial court's 2013 order.[2]

In January 2016, Bolbol filed a motion to dissolve the injunction or in the alternative for a new trial.[3] Her motion was based on her discovery in early 2014 of three August 2012 police reports that she believed "undermine[d]" the September 2012 trial testimony of Voigt and Neves. She attached these police reports to her motion.

The August 11, 2012 Oakland police report stated that "Feld Entertainment staff" "approached" an officer on August 11 to report "that they were involved in a Battery on 07 Aug 12" during the animal walk. The August 11 report recounted that Neves told the officer that on August 7 at 9:00 p.m. she was assaulted by two women. One of them ("S1") she described as "FW, 5'6" tall, Dk ear length hair, 30-39 yrs old, wearing prescription eye glasses, wearing Gry shirt, Dk jeans." The report said that Neves told the officer that S1 "jabbed" Neves "twice" in the stomach with her "elbow." The report stated that Neves said that the second woman ("S2") also "jabbed" Neves in the stomach

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[2] In early January 2016, Feld filed a request to renew the restraining order for another three years. The court set a hearing on the renewal request for January 26, 2016. Bolbol opposed the renewal request on the ground that "[t]here has been a material change in facts." Beginning on January 26, 2016, the superior court repeatedly continued the hearing on the renewal request and extended the WVRO, ultimately extending it to July 2016. In July 2016, the court renewed the WVRO and set the new expiration date as July 20, 2019.

Feld asserts that Bolbol's appeal is moot because of the 2016 renewal. Not so. Had the injunction been dissolved, it could not have been renewed. If we agreed with Bolbol that the superior court abused its discretion in denying her motion and directed the court to grant her motion, the renewal of the injunction would thereby be invalidated.

[3] In her opening appellate brief, Bolbol did not contend that the superior court erred in denying her alternative motion for a new trial. In her reply brief, she asserts that the superior court erred in denying her alternative motion for a new trial. We do not consider issues raised for the first time in a reply brief. (*Reichardt v. Hoffman* (1997) 52 Cal.App.4th 754, 764-765.) Hence, we decline to consider Bolbol's argument that the superior court erred in denying her alternative motion for a new trial.

with her "right elbow." Neves described S2 as "FH, long hair past her shoulders pulled back, about 5'7" tall, about 20-29 yrs old, wearing purple shirt and shorts." She told the officer that she "can identify both S1 and S2 and wants to press charges." The report also stated that Bailey said he had seen Neves "getting shoved and pushed by a woman he knows as [redacted]," whom he described as "about 45 yrs old, Blk shoulder length hair, 5 feet 5 inches tall, 135 lbs, wearing Lt shirt, Dk pants."[4] The August 11 Oakland police report identified Andersen as a suspect and gave her age as "35-50." It also identified Voigt as a victim but did not attribute any statements to her.

The August 13, 2012 Milpitas police report pertained to a Milpitas police response to a reported reckless driving incident. The officers identified the suspects in the reckless driving incident as Andersen and Shannon Lynn Campbell and detained them. While the Milpitas officers were waiting for the California Highway Patrol to arrive to investigate the reckless driving incident, Neves and Voigt "walked by the area and recognized Andersen as the Suspect who assaulted them on 08/11/12 [*sic*] in Oakland, CA while they were working for the circus." The report stated that Voigt "explained that Andersen had elbowed her in the stomach. She said she recognized Andersen by her face and her blonde hair." Neves "also said that Andersen assaulted her by shoving her with her shoulder. Neves identified Andersen by her face." The report said that Neves and Voigt told the Milpitas officers that when they reported this assault to the Oakland police they "were not able to identify the Suspects." Neves and Voigt asked the officers to arrest Andersen for assaulting them. The report also stated that Bailey told the Milpitas officers that "when the initial report was filed, the Suspect was never identified." Andersen and Campbell were released after Bailey decided not to press charges for the reckless driving incident.

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[4] The name is blacked out on the copy of the report submitted by Bolbol. It is not clear who made the redaction.

The August 14, 2012 Oakland police report stated that it pertained to "several batterys [*sic*] which occurred during the elephant walk which occured [*sic*] on the second of August (08/02/12) [*sic*]." The report stated that Feld employee Michael Stuart had told the officer that Andersen had punched him on August 7 during the animal walk. The report also stated that Voigt had told the officer that on August 7 at 8:30 p.m. "two protesters" "began shoulder checking me" and "struck" her "approximately several times," and a man "hit me in the shoulder."

Feld opposed Bolbol's motion on the grounds that (1) the court lacked jurisdiction to dissolve the WVRO, (2) Bolbol's motion was insufficient to support dissolving the WVRO, and (3) her motion for a new trial was both untimely and unmeritorious. Feld produced a September 2014 deposition of Voigt at which she had testified that the Milpitas report was inaccurate in stating that she had identified Andersen as the person who had elbowed her. She insisted that it was Bolbol, not Andersen, who had elbowed her. "I never said that the person I was recognizing [(Andersen)] was the one that elbowed me. I said that in the event I was elbowed and pushed. I recognized that she [(Andersen)] was there and she threatened me with words and she harrassed me . . . ." "[S]he was not the one that elbowed me. She harassed me, she threatened me, but the one that elbowed me was Deniz [Bolbol]."

Bolbol responded by producing excerpts from depositions of the Oakland and Milpitas police officers who had prepared two of the police reports. The Oakland officer who had written the August 11, 2012 report testified at a December 2014 deposition that Voigt had told him what he wrote in that report. The Milpitas officer who had prepared the August 13, 2012 Milpitas report testified at his December 2014 deposition that Voigt and Neves had told him what he wrote in his report. Bolbol also produced an August 13, 2012 "NOTICE OF COMPLAINT" signed by Voigt charging Andersen with "assault & battery."

The court denied Bolbol's motion, and Bolbol timely filed a notice of appeal from the court's order.

II. Analysis

"Upon notice and motion, the court may modify or dissolve a final injunction upon a showing that there has been a material change in the facts upon which the injunction was granted, that the law upon which the injunction was granted has changed, or that the ends of justice would be served by the modification or dissolution of the injunction." (Civ. Code, § 3424, subd. (a); see also § 533.) An order "refusing to grant or dissolve an injunction" is appealable. (§ 904.1, subd. (a)(6).) "'"[G]ranting, denial, dissolving or refusing to dissolve a permanent or preliminary injunction rests in the sound discretion of the trial court upon a consideration of all the particular circumstances of each individual case"' and 'will not be modified or dissolved on appeal except for an abuse of discretion.'" (*Salazar v. Eastin* (1995) 9 Cal.4th 836, 850.)

Bolbol suggests that we should review the superior court's ruling for substantial evidence. She asserts: "By denying Appellant's 'Motion to Dissolve' the court was affirming its belief and finding of the credibility of the two key witness[es] Neves and Voigt – the sole basis for the court's original issuance of the injunction against Appellant." Bolbol's characterization is inaccurate. Bolbol had the burden of "showing" either "a material change in the facts upon which the injunction was granted . . . or [that] the ends of justice would be served by the modification or dissolution of the injunction" in order to prevail on her motion. The court's denial of Bolbol's motion was a discretionary conclusion that Bolbol had failed to satisfy her burden. Both of these potential grounds for dissolving the injunction were discretionary determinations that did not require a redetermination of the facts. A determination of what will serve "the ends of justice" is a purely discretionary decision. An assessment of whether Bolbol's motion had established "a material change in facts" did not require the superior court to make a

redetermination of the underlying facts, but only to determine whether *Bolbol's showing* established that a material change in facts had occurred. We review the superior court's ruling for abuse of discretion.

"'Discretion is abused whenever, in its exercise, the court exceeds the bounds of reason, all of the circumstances before it being considered. The burden is on the party complaining to establish an abuse of discretion, and unless a clear case of abuse is shown and unless there has been a miscarriage of justice a reviewing court will not substitute its opinion and thereby divest the trial court of its discretionary power.'" (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 566.)

Bolbol claims that "glaring inconsistencies" between the testimony of Neves and Voigt at trial and the statements attributed to them in the police reports *required* the superior court to conclude that she had met her burden. She maintains that the police reports were "uncontradicted evidence" that Neves and Voigt "Lied" at trial, to the police, and at deposition. Bolbol points to evidence that Neves and Voigt were aware of her identity at the time of the police reports because Feld identified Bolbol to them in advance of the August 7, 2012 animal walk. And she references a photograph allegedly showing that Bolbol was within sight when Neves and Voigt were telling the Milpitas police that Andersen had assaulted them. In Bolbol's view, the fact that the police reports contain accusations against Andersen but not against Bolbol *establishes* that the trial testimony of Neves and Voigt that Bolbol assaulted them was false. She insists that the police reports "clearly establishe[d]" that she was "innocent" and that Neves and Voigt were "not credible."

Bolbol's argument assumes that the superior court was obligated to credit the truth of the statements in the police reports and to draw the same conclusions that she does from those statements. The abuse of discretion standard of review that we must apply to the superior court's ruling does not permit us to disturb that ruling unless it "exceeds the bounds of reason" and creates "a miscarriage of justice." "'A judgment or order of the

lower court is *presumed correct*. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown.'" (*Denham v. Superior Court, supra*, 2 Cal.3d at p. 564.)

We must presume that the superior court did *not* credit the evidence submitted by Bolbol in support of her motion. So long as a decision to discredit that evidence does not "exceed[] the bounds of reason," we must uphold it. Here, the superior court reasonably could have concluded that the police reports did not accurately report the statements of Neves and Voigt. Because police reports are often produced under severe time constraints, it is common that such reports include some inaccurate information. While the police officers affirmed at their depositions that their reports were accurate, the court reasonably could have concluded that they lacked any memory of the events given the passage of more than two years between their routine preparation of the reports and their deposition testimony. Further, the court could have credited Voigt's deposition testimony, despite the fact that it was given two years after the events, on the ground that she was far more likely to independently remember the circumstances of a traumatic event that had happened to her than the officers were to independently remember what a particular individual told them.

Since all presumptions favor the superior court's ruling and a reasonable court could have discredited Bolbol's showing, we can find no abuse of discretion and must affirm the superior court's order.

III. Disposition

The order is affirmed.

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Mihara, J.

WE CONCUR:

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Elia, Acting P. J.

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Bamattre-Manoukian, J.